

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

VICTOR CHARLES FOURSTAR, JR.,

Plaintiff,

vs.

JACQUELINE DECOU, et al.,

Defendants.

CV-13-0093-GF-DWM-RKS

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

On November 4, 2013, Plaintiff Victor Fourstar, a federal inmate confined in the United States Penitentiary in Marion, Illinois, filed a Motion to Proceed in Forma Pauperis (Doc. 1) and a proposed Complaint (Doc. 2). Mr. Fourstar is subject to the three strikes provision of 28 U.S.C. § 1915(g) and therefore the Motion to Proceed in Forma Pauperis should be denied.

Permission to proceed in forma pauperis is discretionary with the Court. *See* 28 U.S.C. § 1915(a). 28 U.S.C. § 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Mr. Fourstar has filed at least three civil actions which have been dismissed

as frivolous or for failure to state a claim. *See Fourstar v. Ness*, CV-05-108-SEH (D. Mont. Judgment of dismissal filed April 26, 2006; affirmed on appeal May 5, 2008); *Fourstar v. Murlak*, CV-07-5892-ODW-SS (C.D. Cal. Judgment of dismissal filed May 26, 2010; affirmed on appeal December 1, 2010); and *Fourstar v. Zemyan*, CV-08-50-GF-SEH (D. Mont. Judgment of dismissal filed August 26, 2008; appeal dismissed for failure to prosecute April 15, 2009). Two other courts have recognized that Mr. Fourstar is subject to the three-strikes provision of 28 U.S.C. § 1915(g) and denied him permission to proceed in forma pauperis. *See Fourstar v. Brown*, No. 11-230-TUC-FRZ (D.Ariz, Order dated May 18, 2011; appeal dismissed for failure to prosecute November 9, 2011; petition for writ of certiorari denied June 4, 2012); *Fourstar v. Eckroth*, No. 3:12-CV-615-JMM-EC (M.D.Penn Order dated April 9, 2012, affirmed on appeal January 30, 2013; petition for writ of certiorari denied October 7, 2013).¹

Mr. Fourstar has exceeded the three “strikes” allowed by the Prison Litigation Reform Act to a prisoner attempting to proceed in forma pauperis in a federal civil lawsuit. As such, he cannot proceed in forma pauperis in the instant

¹Mr. Fourstar argues in his Motion to Proceed in Forma Pauperis that he intends to file a motion for rehearing in the *Eckroth* case and that the action raises important “3 strikes” questions. A pending petition for rehearing does not disturb the three strikes Mr. Fourstar had received prior to filing the *Eckroth* case.

case unless he can show that he qualifies for the “imminent danger of serious physical injury” exception of 28 U.S.C. § 1915(g). Even when construed liberally in Mr. Fourstar’s favor, the allegations in the Complaint do not support a finding that he is in “imminent danger of serious physical injury.”

While ordinarily litigants are given a period of time to pay the full filing fee of \$350.00, Mr. Fourstar should not be allowed to do so in this case. Mr. Fourstar has been made aware on at least two occasions that he is subject to the provisions of 28 U.S.C. § 1915(g) and cannot submit such filings without payment of the filing fee or demonstrating imminent danger of serious physical harm.

Mr. Fourstar is not entitled to a ten-day period to object. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). No motion for reconsideration will be entertained.

It is **RECOMMENDED:**

Mr. Fourstar’s Motion to Proceed in Forma Pauperis (Doc. 1) should be denied. The Clerk of Court should be directed close the case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 13th day of November, 2013.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge